

AMENDED IN SENATE MAY 27, 2014

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SENATE BILL

No. 967

Introduced by Senators De León and Jackson

(Principal coauthor: Assembly Member Lowenthal)

**(Coauthors: Senators Beall, Cannella, Evans, Galgiani, Monning,
Pavley, Torres, Wolk, and Yee)**

(Coauthors: Assembly Members Ammiano, Fong, Gonzalez,
Quirk-Silva, Skinner, Ting, and Williams)

February 10, 2014

An act to add Section 67386 to the Education Code, relating to student safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 967, as amended, De León. Student safety: sexual assault.

Existing law requires the governing boards of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions to adopt and implement written procedures or protocols to ensure that students, faculty, and staff who are victims of sexual assault on the grounds or facilities of their institutions receive treatment and information, including a description of on-campus and off-campus resources.

This bill would require the governing boards of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary ~~institutions that~~ *institutions, in order to receive public state funds for student financial assistance* ~~assistance~~, to adopt policies concerning campus sexual violence, domestic violence,

dating violence, and stalking that include certain elements, including an affirmative consent standard in the determination of whether consent was given by a complainant. The bill would require these governing boards to adopt certain sexual assault policies and protocols, as specified, and would require the governing boards, to the extent feasible, to enter into memoranda of understanding or other agreements or ~~less formal collaborative~~ partnerships with on-campus and community-based organizations to refer ~~to victims~~ *students* for assistance or make services available to ~~victims~~ *students*. The bill would also require the governing boards to implement comprehensive prevention *and outreach* programs addressing sexual assault, domestic violence, dating violence, and stalking. By requiring community college districts to adopt or modify certain policies and protocols, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 67386 is added to the Education Code,
2 to read:
3 67386. (a) ~~The~~ *In order to receive state funds for student*
4 *financial assistance, the* governing board of each community
5 college district, the Trustees of the California State University, the
6 Regents of the University of California, and the governing boards
7 of independent postsecondary institutions ~~that receive public funds~~
8 ~~for student financial assistance~~ shall adopt a policy concerning
9 campus sexual violence, domestic violence, dating violence, and
10 stalking that includes all of the following:
11 (1) An affirmative consent standard in the determination of
12 whether consent was given by a complainant. “Affirmative
13 consent” is ~~a freely and affirmatively communicated willingness~~
14 ~~to participate in particular sexual activity or behavior, expressed~~

~~either by words or clear, unambiguous actions: an affirmative, unambiguous, and conscious decision by each participant to engage in mutually agreed-upon sexual activity. Consent is informed, freely given, and voluntary. It is the responsibility of the person who wants to engage in initiating the sexual activity to ensure that he or she has the consent of the other person to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. For that reason, relying solely on nonverbal communication can lead to misunderstanding. The existence of a dating relationship between the persons involved, or the fact of a past sexual relationship, shall not provide the basis for an assumption of consent. Consent must be present ongoing throughout a sexual activity, and at any time, a participant can communicate that he or she no longer consents to continuing the sexual activity. If there is confusion as to whether a person has consented or continues to consent to sexual activity, it is essential that the participants stop the activity until the confusion can be clearly resolved. encounter and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.~~

~~(2) A provision specifying that a claim by the accused that he or she believed that the complainant consented to the sexual activity shall not be considered~~

~~(2) A policy that, in the evaluation of complaints in the disciplinary process, it shall not be a valid excuse that the accused believed that the complainant consented to the sexual activity under either of the following circumstances:~~

~~(A) The accused's belief in consent arose from the self-induced intoxication or recklessness of the accused.~~

~~(B) The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting.~~

~~(3) A preponderance of the evidence standard in the determination of disciplinary action.~~

~~(4) In A policy that, in the evaluation of complaints in the disciplinary process, an individual under any of the following conditions is unable to consent to the sexual activity: it shall not be a valid excuse that the accused believed that the complainant consented to the sexual activity if the accused knew or reasonably~~

1 *should have known that the complainant was unable to consent to*
2 *the sexual activity under any of the following circumstances:*

3 (A) ~~Asleep~~ *The complainant was asleep or unconscious.*

4 (B) ~~Incapacitated~~ *The complainant was incapacitated due to*
5 *the influence of drugs, alcohol, or medication; medication, so that*
6 *the complainant could not understand the fact, nature, or extent*
7 *of the sexual situation.*

8 (C) ~~Unable~~ *The complainant was unable to communicate due*
9 *to a mental or physical condition.*

10 (b) ~~The~~ *In order to receive state funds for student financial*
11 *assistance, the governing board of each community college district,*
12 *the Trustees of the California State University, the Regents of the*
13 *University of California, and the governing boards of independent*
14 *postsecondary institutions that receive public funds for student*
15 *financial assistance shall adopt detailed and victim-centered sexual*
16 *assault policies and protocols that comport with best practices and*
17 *current professional standards. At a minimum, the policies and*
18 *protocols shall cover all of the following:*

19 (1) *A policy statement on how the institution will protect the*
20 *confidentiality of individuals involved in the incident.*

21 (2) *Initial response by the institution's personnel to a report of*
22 *sexual assault, including requirements specific to assisting the*
23 *victim, providing information in writing about the importance of*
24 *preserving evidence, and the identification and location of*
25 *witnesses.*

26 (3) *Response to stranger and nonstranger sexual assault.*

27 (4) *The preliminary victim interview, including the development*
28 *of a victim interview protocol, and a comprehensive followup*
29 *victim interview.*

30 (5) *Contacting and interviewing the accused.*

31 (6) *Providing written notification to the victim about the*
32 *availability of, and contact information for, on- and off-campus*
33 *resources and services, and coordination with law enforcement,*
34 *as appropriate.*

35 (7) *Participation of victim advocates.*

36 (8) *Investigating allegations that alcohol or drugs were involved*
37 *in the incident; incident, and providing amnesty from disciplinary*
38 *action if the victim violated the school's policy when the sexual*
39 *assault occurred.*

40 (9) *The role of the institutional staff supervision.*

1 (10) *A comprehensive, trauma-informed training program for*
2 *campus officials involved in investigating and adjudicating campus*
3 *sexual violence, domestic violence, dating violence, and stalking*
4 *cases.*

5 ~~(10)~~

6 (11) Procedures for anonymous reporting of sexual assault.

7 (c) ~~To the extent feasible,~~ *In order to receive state funds for*
8 *student financial assistance,* the governing board of each
9 community college district, the Trustees of the California State
10 University, the Regents of the University of California, and the
11 governing boards of independent postsecondary institutions ~~that~~
12 ~~receive public funds for student financial assistance shall~~ *shall, to*
13 *the extent feasible,* enter into memoranda of understanding,
14 agreements, or ~~less formal~~ collaborative partnerships with existing
15 on-campus and community-based organizations, including rape
16 crisis centers, to refer ~~victims~~ *students* for assistance or make
17 services available to ~~victims~~ *students*, including counseling, health,
18 mental health, victim advocacy, *student advocacy*, and legal
19 assistance.

20 (d) ~~The~~ *In order to receive state funds for student financial*
21 *assistance,* the governing board of each community college district,
22 the Trustees of the California State University, the Regents of the
23 University of California, and the governing boards of independent
24 postsecondary institutions ~~that receive public funds for student~~
25 ~~financial assistance,~~ shall implement comprehensive prevention
26 *and outreach* programs addressing sexual violence, domestic
27 violence, dating violence, and stalking. A comprehensive
28 prevention program shall include a range of prevention strategies,
29 including, but not limited to, women's empowerment programming,
30 awareness raising campaigns, primary prevention, bystander
31 intervention, and risk reduction. *Outreach programs shall be*
32 *provided to make students aware of the institution's policy on*
33 *campus sexual violence, domestic violence, dating violence, and*
34 *stalking. At a minimum, an outreach program shall include a*
35 *process for contacting and informing the student body, campus*
36 *organizations, athletic programs, and student groups about the*
37 *institution's overall sexual assault policy, the practical implications*
38 *of an affirmative consent standard, and the rights and*
39 *responsibilities of students under the policy. Outreach*
40 *programming shall be included as part of new student orientation.*

1 SEC. 2. If the Commission on State Mandates determines that
2 this act contains costs mandated by the state, reimbursement to
3 local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

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